IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WA.No. 165 of 2004()

AGAINST THE JUDGEMENT IN OP.2558/2000 Dated 03/10/2003

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APPELLANT: RESPONDENTS 1 AND 2 IN THE O.P:

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1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
VIGILANCE (A) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE TRANSPORT COMMISSIONER,
MOTOR VEHICLE DEPARTMENT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER BENNY GERVASIS

RESPONDENTS: PETITIONER IN THE O.P:

T.K.HARIDASAN, AGED 53 YEARS,
S/O. RAMAN, JOINT REGIONAL TRANSPORT OFFICER,
GURUVAYUR, RESIDING AT HOUSE NO.348 (B), WARD 8,
NEW MUNICIPAL PARK, ALWAYE.

BY ADV. SRI.K.A.ABRAHAM
SRI.BIJU MARTIN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, ALONG WITH WA NO. 492 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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W.A.Nos.165 & 492 of 2004
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Dated this the 5th day of June, 2007.

JUDGMENT

Radhakrishnan,J.

Both these appeals arise out of a common judgment in O.P.No.2558 of 2000. The Original Petition was preferred by the appellant in W.A.No.492 of 2004 seeking a writ of certiorari to quash Ext.P6 and for a mandamus directing the respondents to reinstate the petitioner in service with all monetary benefits and also for other consequential reliefs.

2. Petitioner was working as Motor Vehicle Inspector, Irinjalakuda. While so, a criminal case was registered against him on 20.7.1993 by the Dy. Superintendent of Police (Vigilance), Thrissur under Section 7 of the Prevention of Corruption Act, 1988. Petitioner was arrested on 21.7.1993 by the Vigilance Police. Later by Ext.P1 order dated 29.7.1993, he was placed under suspension. Subsequently, by Ext.P2 order dated 30.12.1995, he was reinstated in

service. Later he was promoted as joint Regional Transport Officer on 1.1.1997.

3. In the meantime, as per Ext.P8 dated 14.9.1995, the following charges were framed against the petitioner.

> "1. THAT you, Shri. T.K. Haridasan @ Haridas while working as Motor Vehicle Inspector, Irinjalakuda, during July, 1993, by abusing your official position as a Government servant, demanded from Shri.Shanavas, Proprietor of M.M. Brothers, Driving School, Kodungallur illegal gratification at the rate of Rs.150/- for Car and Autorickshaw and Rs.100/- for Motor Cycle, as a motive or reward for passing each candidate of his Driving School in the driving test on 21.7.1993, who failed in the test conducted on 9.6.1993 and 14.7.93, and in pursuance of the said demand, you accepted Rs.1150/- from the said Shri. Shanavas, at about 12.05 P.M. on 21.7.1993, at your office room at Irinjalakuda, and thereby failed to maintain absolute integrity and devotion to duty;
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> 2. THAT You, Shri.T.K.Haridasan @ Haridas, while working in the above said capacity, during July 1993, by abusing your official position as a Government servant, demanded and accepted illegal gratification of Rs.1400/- from Shri. Yasodaran, Master of Raju Driving School, Chalakudi, at about 11.40 A.M. on 21.7.1993, at your office at Irinjalakuda, as a motive or reward for passing the candidates S/Shri. Sasikumar, Lonappan, Jomon, Raghu, Ravi and Unnimon of his Driving School in the driving test

conducted by you on 21.7.93, and thereby failed to maintain absolute integrity and devotion to duty;

3. THAT You, Shri. T.K. Hariasan @ Haridas while working in the above said capacity, during July, 1993, by abusing your official position as a Government servant, allowed the failed candidates S/Shri. Mohammed Syed, Sageer, Ravi and P.S. Navas in the driving test conducted on 3.7.1993 and 14.7.1993 to re-appear in the driving test conducted on 21.7.1993 before the expiry of 30 days in violation of Section 9(5)(a) of M.V. Act, 1988 and thereby failed to maintain absolute integrity and devotion to duty;

4. THAT You, Shri. T.K. Haridasan @ Haridas, while working in the above said capacity, during July, 1993, by abusing your official position as a Government servant, allowed the failed candidates S/Shri. Mohammed Sayed, Ravi, Sageer, Ashraf and P.S. Navas to re-appear in the driving test conducted on 21.7.1993 without remitting the required additional fees of Rs.15/- each and thereby caused a wrongful loss of Rs.75/- to the Government and the corresponding wrongful gain to them and integrity and devotion to duty."

An enquiry was conducted as per the Kerala Civil Services (Vigilance Tribunal) Rules, 1960. A report was submitted before the Government with findings and recommendations of the Tribunal. After the enquiry, the Tribunal filed a report recommending the Commission to remove

the petitioner from service in respect of charge Nos. 1 and 2. No separate penalty was recommended for charge No.3. So far as charge No.4 was concerned, the Tribunal recommended the penalty of recovery of Rs.75/- from the petitioner.

4. Later, Ext.P6 order dated 19.11.1999, was issued by the Government removing the petitioner from service. Challenging the disciplinary action, petitioner approached this Court mainly on the ground that the show cause notice proposing to impose major punishment of removal from service was issued to him before he was furnished with a copy of the enquiry report and affording him opportunity to submit his explanation against the findings contained in the enquiry report and also on the ground that evidence on record would not establish that the petitioner was guilty of the charges levelled against him. It was noticed that even though the prosecution had examined 15 witnesses, all the material witnesses spoke against the prosecution. PW 3 to PW9 turned hostile. Learned single Judge after elaborately considering the matter, came to the conclusion that charge Nos. 1 and 2 were not proved. The learned single Judge quashed Ext.P6 proceedings as regards charge Nos. 1 and 2 and the penalty of removal from service imposed on the petitioner was set aside.

5. Learned single Judge also considered the arguments with regard to charge No.3, which is a very minor charge. Even though the charge No.3 is found to be proved, no penalty has been imposed on the petitioner for the said charge. Charge No.4 says that the petitioner caused a pecuniary loss of Rs.75/- to the Government. The penalty imposed is that the the sum of Rs.75/- shall be recovered from the petitioner. Learned single Judge was not inclined to set aside Ext.P6 for non-supply of the enquiry report before the first stage of the proceedings was over. Learned single Judge held that the order to recover Rs.75/- from the petitioner be sustained and ordered that the petitioner is entitled to be reinstated in service with effect from the date of Ext.P6 order with all consequential benefits. There was a further direction to pay the petitioner subsistance allowance as per Rules from 5.3.1999 till the date of Ext.P6. A direction was given to the Government to take steps to regularise the service of the petitioner in accordance with the Kerala Service Rules, after due notice to the petitioner.

6. We have gone through the report and the materials made available and we are also of the view that the prosecution has miserably failed to prove charges 1 and 2 against the petitioner. Admittedly, no eye witness was examined in this case. Further, there

is nothing to show that the delinquent employee had received any amount from the complainant. On facts, learned Judge was justified in interfering with the punishment imposed on the basis of charge Nos.1 and 2. With regard to charge No.3, no consequential orders have been passed by the Government, even though the learned single Judge found that charge No.3 is proved. Therefore, it is necessary that consequential orders have to be passed by the Government with notice to the petitioner on charge No.3. We make it clear that benefit, if any due to the petitioner on the basis of the judgment be paid within a period of three months from the date of receipt of a copy of this judgment.

Writ Appeal Nos. 165 and 492 of 2004 are dismissed as above.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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